

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

DENNIS MARX, Pro Se	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION CASE NO.
	)	2:13-CV-00175-RWS
ROBERT HEAGERTY, et al.,	)	
	)	
Defendants.	)	

**THE COUNTY DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR  
MOTION FOR CLARIFICATION**

COME NOW the County Defendants,<sup>1</sup> without waiving process, service of process, and while otherwise specifically reserving all jurisdictional and other defenses available to them, and file this Reply Brief in Support of their Motion for Clarification showing the Court as follows:

The County Defendants filed the subject motion to seek the Court's guidance on how it would like the action to proceed. (Doc. 10.) The County Defendants acknowledged that the case is currently awaiting frivolity review as provided in the Court's September 20th Order (Doc. 6), but expressed their uncertainty as to whether frivolity review is appropriate in the present action. That

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<sup>1</sup> Again, the undersigned would represent the Forsyth County Sheriff's Office and its employees should the action proceed. By appearing specially, the County Defendants do not concede any of the named defendants are proper parties.

issue is the central focus of the motion. As a matter of practical consequence stemming from addressing that issue, the County Defendants also sought Court clarification regarding the deadline for response to the apparent request for waiver of service. If the Court determines that frivolity review should proceed, then service of process is premature at this time. See 28 U.S.C. § 1915(d). If the Court determines that frivolity review is not appropriate and that the action should proceed normally, the County Defendants ask that the Court provide clarification as to which of the complaints filed by Plaintiff will be the operative complaint and that the Court grant additional time from the date of its order in which to respond to the apparent request for waiver of service.

These two issues (the appropriateness of frivolity review and the deadline for responding to the apparent request for waiver of service) were the only ones raised in the County Defendants' motion. Plaintiff, however, takes the opportunity of his response to the motion (Doc. 11) to discuss a host of issues outside the scope of the motion.<sup>2</sup> For example, Plaintiff pleads for leniency in light of his *pro se* status and his asserted urgency in filing the action. (Doc. 11, pp. 4-5, 7.) All of these issues are unrelated to the nature of the motion and, therefore, the County

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<sup>2</sup> The County Defendants note that Plaintiff has created his own stamp-"filed" mark and document numbers at the top of his recent filings. See (Docs. 11, 12.) The County Defendants ask that Plaintiff be admonished to not do this in the future so as to avoid confusion.

Defendants do not address them here and ask that the Court not consider them at this time. Indeed, were the County Defendants to wade into the thicket of these issues now it would run counter to the purpose and benefits of frivolity review. Even if the Court finds frivolity review is inappropriate, addressing these issues at this stage (prior to service while the nature of the operative complaint and identity of potential defendants are still unclear) would be premature. The County Defendants file this reply to call attention to the extent to which the response exceeds the scope of the issues before the Court on the motion.

Respectfully submitted this 3rd day of January, 2014.

**JARRARD & DAVIS, LLP**

/s/ Sean P. Kane  
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(D), I certify that the foregoing reply brief has been prepared in accordance with Local Rule 5.1(B) and is in a 14 point Times New Roman font.

This 3rd day of January, 2014.

**JARRARD & DAVIS, LLP**

/s/ Sean P. Kane  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the within and foregoing THE COUNTY DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR CLARIFICATION by placing a copy in the U.S. Mail addressed to:

Dennis Marx  
1405 Lakeside Trail  
Cumming, Georgia 30041

*Pro se*

This 3rd day of January, 2014.

**JARRARD & DAVIS, LLP**

/s/ Sean P. Kane  
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